

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-192888-D1 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Victor Goldsmith

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1542

Victor Goldsmith

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 27 October 1965, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months outright plus four months on eight months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as chief reefer engineer on board the United States SS PRESIDENT JACKSON under authority of the document above described, on 17 July 1965, Appellant assaulted and battered second reefer engineer Hedblom with a hammer.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence an entry in the ship's Official Logbook and the testimony of three eyewitnesses to the alleged offense including that of the victim.

Appellant testified he hit the second reefer with the hammer because Appellant was in fear of bodily harm after having been attacked by the other man a short time before this incident occurred.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved, and entered the above order of suspension.

FINDINGS OF FACT

On 17 July 1965, Appellant was serving as chief reefer engineer on board the United States SS PRESIDENT JACKSON and acting under authority of his document while the ship was in the port of Naha, Okinawa.

On this date, Appellant was standing the 1600 to 2400 watch of second reefer engineer Hedblom since he was not on board. About 1800, Hedblom returned to the ship in a somewhat intoxicated

condition. Apparently because Appellant said he would complete Hedblom's watch, the latter grabbed Appellant's arms and pushed him around in his room. The Chief Engineer was present. He ordered Hedblom to go to his quarters and told Appellant to finish the second reefer's watch.

At 1900, Appellant went below to the engine room. He saw Hedblom having coffee with the fireman, oiler, and Third Assistant Engineer who were on watch. Appellant approached the second reefer and they engaged in a heated argument before Appellant took a ball peen hammer out of his pocket and struck Hedblom on the back of the head with it. The latter fell or sat down and there was no attempt by Appellant to strike another blow. (Appellant weighed about thirty-five pounds less than the second reefer.) Appellant said that he was sorry for what he had done.

Hedblom's head was cut. He was taken to a hospital for medical attention. The wound required seven stitches. The second reefer was able to stand his watch on the following morning.

Appellant's prior record consists of an admonition in 1960 for intoxication on duty.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant acted in self-defense against the larger man who was intoxicated. Appellant was in fear of serious bodily harm as a result of the earlier attack by Hedblom. The purpose of the second reefer's presence in the engine room was to resume his attack on Appellant while the latter was there to stand the watch of the second reefer. The absence of any viciousness by Appellant is shown by the fact that he did not attempt to strike Hedblom a second time with the hammer. The injury was not serious since the second reefer stood his watch on the next day.

It is submitted that the decision should be reversed and set aside in all respects.

APPEARANCE: Julius J. Rosen, Esquire, of New York City, of Counsel.

OPINION

The findings, based on the Examiner's evaluation as to the credibility of the witnesses, do not support the contention that Appellant acted in self-defense. Despite the earlier attack on Appellant by Hedblom, the fact that Appellant approached the second reefer in the engine room indicates that Appellant was not in fear of serious bodily injury at this time. There was no alteration of this situation, by Hedblom threatening to strike Appellant, before Appellant struck the single blow with the hammer. Hence, there was no immediate provocation for Appellant's use of a dangerous weapon except whatever words were directed to him during the argument. The location of the injury on the back of Hedblom's head indicates that he was not facing Appellant when the blow landed.

Regardless of the mitigating circumstances and Appellant's expression of remorse for his conduct, the order of suspension imposed was extremely lenient for an offense of this nature which

fortuitously did not result in a much more serious injury.

ORDER

The order of the Examiner dated at New York, New York, on 27 October 1965, is
AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 1st day of February 1966.

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